

STORAGE NAME: h1197s1.brc

DATE: March 3, 1998

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
BUSINESS REGULATION AND CONSUMER AFFAIRS
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: CS/HB 1197

RELATING TO: Disciplinary Proceedings/DBPR/Health

SPONSOR(S): Committee on Business Regulation and Consumer Affairs and Representative Sublette

COMPANION BILL(S): SB 2078(c)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) BUSINESS REGULATION AND CONSUMER AFFAIRS YEAS 6 NAYS 0
 - (2) HEALTH CARE STANDARDS AND REGULATORY REFORM
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

Presently, the facts -- indeed, the very existence -- of complaints regarding professionals regulated by the Department of Business and Professional Regulation (DBPR) or the Department of Health (DOH) are held confidential from the public unless probable cause has been found. Although the DOH regulates health care professions, the Agency for Health Care Administration (AHCA) handles the investigational and prosecutorial aspects of regulation. The process of completing the investigation and reaching a probable cause determination usually takes months, and can take years.

This situation has placed these agencies in the position of being legally required to deny the existence of complaints, even though there could be dozens of them, all with overwhelming indications that the professional might be a danger to the public. Furthermore, the consumer, by having inquired and been told that no such complaints exist, can be lulled into a false sense of security and may even feel he was *mislead*, once the existence of the violations eventually comes to light (once probable cause determination has been found).

The bill makes essentially identical changes in Parts I and II of chapter 455, F.S. Part I *affects non-medical professions*, and Part II *affects the medical professions*. The bill provides that: **(1)** The department (either DBPR or DOH, as appropriate) may disclose the existence (but not the details) of a complaint which is under investigation, unless it is determined that such disclosure would be detrimental to the investigation; **(2)** Upon the completion of the investigation, the complainant would be allowed to view or obtain a copy of the investigative file, and would be allowed an opportunity to file a written response to the information in the investigative file, prior to the probable cause hearing; **(3)** An elected member of the Legislature may receive confidential complaint and investigatory materials in order to discharge their oversight duties; and **(4)** If public statements that are false or misleading are made, the department may disclose information necessary to correct them.

As indicated by the departments, the bill does not have a fiscal impact on the state or local government, or on the private sector.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

THE CURRENT PROCESS:

Presently, the facts -- indeed, the very existence -- of complaints regarding professionals regulated by the Department of Business and Professional Regulation (DBPR) or the Department of Health (DOH) are held confidential from the public unless probable cause has been found. Chapter 97-261, L.O.F., transferred regulation of health care professionals to the DOH; however, the Agency for Health Care Administration (AHCA) maintains the investigatorial and prosecutorial aspects of regulation. The process of completing the investigation and reaching a probable cause determination usually takes months, and can take years.

This situation has placed these agencies in the position of being legally required to deny the existence of complaints, even though there could be dozens of them, all with overwhelming indications that the professional might be a danger to the public. Furthermore, the consumer, by having inquired and been told that no such complaints exist, is lulled into a false sense of security and can be expected to be legitimately outraged when the existence of the violations eventually comes to light.

Prior to the 1997 revisions, the provisions of s. 455.225, F.S., applied to complaints about professionals licensed by the DBPR or the AHCA. The section also applied to investigations of licensed professionals initiated by either the DBPR or the AHCA. Under present law, s. 455.621, F.S., applies to complaints about health care professionals licensed by the DOH.

Currently, there are two basic procedures that result in complaint reviews: 1) the filing of a formal complaint by the public that is determined to be legally sufficient by the DBPR or the AHCA; and, 2) if the DBPR or the AHCA has reasonable cause, an investigation may be initiated without the filing of a formal complaint. If a complaint filed by the public is determined to not be legally sufficient (i.e., not justified or frivolous), it is not reviewed or investigated further.

The law provides that in most cases a licensee is notified that a complaint has been filed or an investigation is underway. In instances in which there is a board, the law usually provides for the appointment of a probable cause panel (usually three members) from the board. They review the legally sufficient complaint or the findings of the investigation, and determine if there is probable cause that the licensee has violated the applicable statutes or rules, based on the evidence provided by the DBPR or the AHCA. If there is a finding of probable cause, the case proceeds to a formal or informal hearing for disposition.

In audit report #12156, dated 8/17/93, the Auditor General reviewed the consumer complaint process of the Department of Business and Professional Regulation. Due to the number and diversity of regulated professions, the audit scope was limited to five of the 43 regulated professions: construction; cosmetology; medicine; nursing; and talent agents.

During 1991-92, 10,152 complaints were received for the five professions and accounted for over 66% of all complaints received during the period. During fiscal 1991-92, there were a total of 7,394 complaints (73%) determined to be legally sufficient and warranted further investigation. One could assume that approximately 2,758 or 27% were dismissed without a finding of legal sufficiency. During the same period, probable cause was found for 2,105 complaints (21%), and 1,380 complaints (14%) were dismissed without a finding of probable cause.

The complaint process that was previously used by the Florida Bar for complaints against attorneys was very similar to that presently used by the DBPR and the AHCA until it was changed several years ago. Now, if a person calls up and asks about a specific complaint against an attorney, the Bar will disclose limited information about the complaint. In addition, once the probable cause panel concludes its review, the findings are open to the public in all instances (whether or not probable cause was found).

B. EFFECT OF PROPOSED CHANGES:

The bill makes essentially identical changes in Parts I and II of chapter 455, F.S., affecting non-medical professions (DBPR) and medical professions (DOH) by:

- 1) Enabling the person who has complained about a licensed professional to obtain and respond to the information which caused the administering body to determine that no probable cause exists for disciplinary action. That information is currently confidential;
- 2) Allowing the appropriate department, upon inquiry regarding a specific licensee, to acknowledge the existence of an existing complaint and investigation against the licensee;
- 3) Authorizing elected members of the Legislature to obtain investigatory and complaint data that might otherwise be confidential, in order to discharge their oversight duties; and
- 4) Allowing the investigating agency to correct any misleading or false information which has been made public.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

- a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

- (2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

- (3) any entitlement to a government service or benefit?

No.

- b. If an agency or program is eliminated or reduced:

- (1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

- (2) what is the cost of such responsibility at the new level/agency?

N/A

- (3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?

No.

- b. Does the bill require or authorize an increase in any fees?

No.

- c. Does the bill reduce total taxes, both rates and revenues?

No.

- d. Does the bill reduce total fees, both rates and revenues?

No.

- e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

Yes. It allows the consumer -- under certain circumstances -- to gather the existing information regarding complaints or investigations against licensed professionals, and to make his own determination as to whether the facts merit a decision not to use the licensee.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

No.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Sections 455.225, 455.621, 468.535, 490.00515, and 491.0047, F.S.

E. SECTION-BY-SECTION RESEARCH:

Section 1. Amends s. 455.225, F.S., in Part I of chapter 455, F.S., *relating to the professions under the Department of Business and Professional Regulation (DBPR)* to:

- 1) Clarify existing provisions requiring the DBPR to complete its investigation within six months;
- 2) Provide that pursuant to a specific inquiry about a licensee, the DBPR shall disclose the *existence* (but not the details) of a complaint and its associated investigation, unless such disclosure would be detrimental to the investigation;
- 3) Provide that upon the completion of the investigation, the complainant shall be allowed to view or obtain a copy of the investigative file;

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- 4) Allow the complainant an opportunity to file a written response to the information in the investigative file, prior to the probable cause hearing;
- 5) Provide that an elected member of the Legislature may receive confidential complaint and investigatory materials in order to discharge their oversight duties; and
- 6) Provide that if public statements that are false or misleading are made, the department may disclose information necessary to correct them.

Section 2. Amends s. 455.621, F.S., in Part II of chapter 455, F.S., *relating to the professions under the Agency for Health Care Administration (AHCA) and the Department of Health (DOH)*. This section includes the same provisions that appear in Section 1 with one exception. The section:

- 1) Clarifies existing provisions requiring the DOH to complete its investigation within six months;
- 2) Provides that pursuant to a specific inquiry about a licensee, the DOH would be allowed to disclose the *existence* (but not the details) of a complaint and its associated investigation, unless such disclosure would be detrimental to the investigation;
- 3) Provides that the confidentiality requirements regarding complaints against licensees do not apply to unlicensed activity **(Not included in section 1)** ;
- 4) Provides that upon the completion of the investigation, the complainant would be allowed to view or obtain a copy of the investigative file;
- 5) Allows the complainant an opportunity to file a written response to the information in the investigative file, prior to the probable cause hearing;
- 6) Provides that an elected member of the legislature may receive confidential complaint and investigatory materials in order to discharge their oversight duties; and
- 7) Provides that if public statements that are false or misleading are made, the department may disclose information necessary to correct them.

Sections 3-5. Amend ss. 468.535, 490.00515, and 491.0047, F.S., to make strictly technical cross-reference changes.

Section 6. Provides an effective date of January 1 of the year after the year in which enacted.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

Consumers will have more information available to them relating to potential problems with a professional.

3. Effects on Competition, Private Enterprise and Employment Markets:

None.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditures of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

- 1) Many licensees and professional associations oppose any disclosure of complaint or investigatory information, unless probable cause has been found. They are concerned that frivolous complaints, if allowed to be made public, could ruin the reputations of licensed professionals.
- 2) On the other hand, under current law, it is possible for a licensee to have literally *dozens* of complaints (with *overwhelming* evidence of his guilt) working their way through what is often a very slow disciplinary process, yet the department is legally required to not disclose even the existence of these complaints to consumers who inquire regarding the licensee's fitness to offer them services. The potential for further consumer harm, and for subsequent outrage from consumers who had unsuccessfully sought such information-- and hired the licensee in question, based on having been given no adverse information -- is obvious.
- 3) The Department of Business and Professional Regulation and the Department of Health support changing this current situation, so that they will be able to let consumers know if such a situation exists.

HB 433 (chapter 97-312, L.O.F.) passed during the 1997 Regular Session of the Florida Legislature, and became law on 6-14-97. It establishes a private entity named the Florida Engineers Management Corporation, effectively "privatizing" licensure processing, complaint

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processing, and investigatory duties of the Board of Professional Engineers. That bill -- which applied only to the regulation of professional engineers -- contained provisions essentially identical to provisions in the original bill which retain confidentiality only until the investigation is complete.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Committee Substitute (CS) adopted in the Business Regulation and Consumer Affairs Committee changed from allowing broad public disclosure to a disclosure back to the complainant only; however, the CS retained the provision that allows the disclosure of the existence (but not the details) of an existing complaint investigation, upon inquiry regarding that specific licensee.

VII. SIGNATURES:

COMMITTEE ON BUSINESS REGULATION AND CONSUMER AFFAIRS:

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